Supreme Court, U.S.
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NO. 92-455

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1992

KNOX COUNTY SCHOOL SYSTEM
PETITIONER

VS.

JASON BABB, A MINOR, THROUGH HIS PARENTS
AND NEXT FRIENDS, JOE AND SHARON BABB
RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
SIXTH CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Kruelle v. Newcastle County School District, 642 F.2d. 687 (3rd Cir. 1981), pp. 6, 9

McKenzie v. Smith, 771 F.2d. 1527(D.C. Cir. 1985), p. 12

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STATEMENT OF THE CASE

Respondent adopts by reference the opinion of the Court of Appeals as Respondent's Statement of the Case.

REASONS FOR DENYING THE WRIT

I.
THERE IS NO CONFLICT AMONG THE CIRCUITS ON THE ISSUES IN THIS CASE.

Under the Individuals With Disabilities Education Act, a disabled student may be placed in a residential program if that is "necessary to provide special education and related services." 34 C.F.R. Section 300.302. In such cases, the school system pays for the residential program, including non-medical care and room and board. Id. A comment to this regulation says that the regulation applies to placements made for educational purposes.

Petitioner argues that the Third and Ninth Circuits applied an "educational purpose" test in Clovis Unified School District v. California Office of Administrative Hearing, 903 F.2d. 635

(9th Cir. 1990) and Kruelle v. Newcastle County School District, 642 F.2d. 687 (3rd Cir. 1981) to determine whether school systems should pay for residential programs. Petitioner contends that in this case the Sixth Circuit did not apply an educational purpose test. Petitioner relies on the following language in the Sixth Circuit's opinion to support this argument: "Any attempt to distinguish academics from treatment when defining 'educational placement' runs counter to the clear language of the act." 965 F.2d. at 109. Viewed in context, this sentence is nothing more than a simple recognition that the concept of education under the Act is broader than traditional academics.

There is no conflict between the Sixth Circuit's decision in this case and the Ninth Circuit's decision in Clovis.

In Clovis, the Court ruled that the psychiatric hospital in that case was not a residential program within the meaning of the Act because it did not have an educational component.

A few months after Clovis, the Ninth Circuit decided Taylor v. Honig, 910 F.2d. 627 (9th Cir. 1990). In Taylor, the Court affirmed the District Court's preliminary injunction placing a disabled child in a psychiatric hospital in Texas. The panel in Taylor distinguished Clovis on several grounds. The psychiatric hospital in Clovis did not have an educational component. Students at the hospital received education from the local school district. Furthermore, the child in Clovis had been admitted in response to an acute psychiatric crisis. The residential program involved in Taylor was both a hospital and a state-

approved school. In addition, the child in Taylor was medically stable. Thus, the placement was for educational, rather than medical purposes. 910 F.2d. at 632.

The facts of this case are similar to those in Taylor. The facility involved in this case is a psychiatric hospital which contains a "specially designed educational program for emotionally disturbed children." 965 F.2d. at 105. The school is state certified. It is also apparent that the placement was made in response to an educational, rather than a medical crisis. Jason Babb's behavior had become intolerable to school officials. His parents had been informed that his expulsion was imminent. They removed Jason from school and placed him in the residential program after they received

this information. Id. There is no conflict between this case and Clovis; Clovis involves different facts. Taylor and this case are in harmony.

Nor is there any conflict with the Third Circuit's decision in Kruelle. The language in this case that Petitioner contends is in conflict with Kruelle is a quotation from Tilton v. Jefferson County Board of Education, 705 F.2d. 800 (6th Cir. 1983). The Tilton Court cited Kruelle in support of this language. 700 F.2d. at 803.

Likewise, the Ninth Circuit in Taylor relied on Clevenger v. Oak Ridge School Board, 744 F.2d. 514 (6th Cir. 1984). 910 F.2d. at 628, 632. Clevenger is included with Tilton in a double citation in this case. 965 F.2d. at 109. Thus, not only is there an absence of conflict, the three Circuits are linked

by mutually supportive citations on this issue.

II.
THIS CASE INVOLVES A ROUTINE APPLICATION OF BURLINGTON SCHOOL COMMITTEE V. MASSACHUSETTS DEPARTMENT OF EDUCATION, 471 U.S. 359 (1985).

As the Sixth Circuit determined, the facts in this case fit squarely within this Court's decision in Burlington School Committee v. Massachusetts Department of Education, 471 U.S. 354 (1985). In Burlington, a unanimous Court held that reimbursement was an appropriate remedy under the Individuals With Disabilities Education Act. The Sixth Circuit correctly applied the Burlington holding that when the decision of parents to place a child in a private school is right, an order requiring the

public schools to reimburse the parents is appropriate relief under Section 1415(e)(2) of the Act.

III.

THE SIXTH CIRCUIT CONSIDERED THE ISSUE OF THE LEAST RESTRICTIVE ENVIRONMENT IN DECIDING THIS CASE.

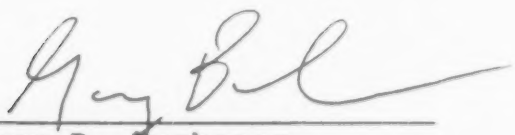
Petitioner argues that the Sixth Circuit ignored the Act's preference for placement in the least restrictive environment. This is incorrect. The Court addressed this issue directly. 965 F.2d. at 104. The Court concluded that under the facts and circumstances of this case, there was no less restrictive alternative to the placement selected by the parents. The residential program in which Jason was placed by his parents was the most appropriate setting for his education and treatment. See, Alamo Heights Independent School District v.

State Board of Education, 790 F.2d. 1153, 1161 (5th Cir. 1986); McKenzie v. Smith, 771 F.2d. 1527, 1535 (D.C. Cir. 1985).

CONCLUSION

This case involves a routine application of clear and well-established law to the facts of this particular case. It is not a case that should be reviewed by the Supreme Court. The petition should be denied.

Respectfully submitted,



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